

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The NYNEX Telephone Companies')	
Offer of Comparably Efficient)	
Interconnection to Payphone Service)	
Providers)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications)	
Act of 1996)	

ORDER

Adopted: April 15, 1997

Released: April 15, 1997

By the Deputy Chief, Common Carrier Bureau:

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I. INTRODUCTION

1. On January 3, 1997, pursuant to the requirements of the Commission's orders in the Payphone proceeding,¹ the NYNEX Telephone Companies (NYNEX) filed a comparably efficient interconnection (CEI) plan for payphone service.² In that proceeding, the Commission directed each Bell Operating Company (BOC) to file an initial CEI plan describing how it will comply with the Commission's Computer III³ CEI equal access parameters and nonstructural safeguards for the provision of payphone services.⁴ BOCs must make available on a nondiscriminatory basis the regulated basic services they provide to independent payphone service providers (PSPs) and to the BOCs' own payphone operations to provide payphone services.⁵

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) (Payphone Order), appeal docketed sub nom., Illinois Public Telecommunications Assn. v. FCC, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996), recon., FCC 96-439 (rel. Nov. 8, 1996) (Reconsideration Order); Order, DA 97-678 (Common Carrier Bur. April 4, 1997) (Clarification Order).

² NYNEX Comparably Efficient Interconnection Plan for Payphone Services (filed Jan. 3, 1997) (NYNEX CEI Plan).

³ Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order), Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order), Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceedings, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), recon. dismissed in part, Order, CC Docket Nos. 90-623 & 92-256, FCC 96-222 (rel. May 17, 1996); BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995) (referred to collectively as the Computer III proceeding).

⁴ Payphone Order at para. 202.

⁵ Payphone Order at paras. 146, 200-204.

2. The Commission gave public notice of NYNEX's CEI plan on January 8, 1997.⁶ On February 7, 1997, eight parties filed comments opposing the plan.⁷ NYNEX submitted reply comments on February 24, 1997. For the reasons discussed below, we approve NYNEX's CEI plan.

II. BACKGROUND

3. The payphone rulemaking proceeding implemented Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act).⁸ Section 276 directed the Commission to prescribe a set of nonstructural safeguards for BOC payphone service to implement the statute's requirements that any BOC: (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange or exchange access service operations; and (2) shall not prefer or discriminate in favor of its payphone service.⁹ The 1996 Act provided that such safeguards must, at a minimum, include the nonstructural safeguards adopted in the Computer III proceeding.¹⁰

4. In the Payphone Order, the Commission determined that the Computer III and ONA nonstructural safeguards would "provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service."¹¹ Accordingly, the Commission required the BOCs to file "CEI plans describing how they will comply with the Computer III unbundling, CEI parameters, accounting requirements, CPNI

⁶ Pleading Cycle Established for Comments on Comparably Efficient Interconnection Plan for Payphone Service Providers, Public Notice, CC Docket No. 96-128, DA 97-31 (rel. Jan. 8, 1997).

⁷ Comments of the American Public Communications Council on NYNEX Telephone Companies' CEI Plan (APCC Comments); AT&T's Comments on NYNEX's Comparably Efficient Interconnection Plan (AT&T Comments); Comments of the Independent Payphone Association of New York, Inc. on the NYNEX Comparably Efficient Interconnection Plan for Payphone Services (IPANY Comments); Comments of the Inmate Calling Service Providers Coalition on NYNEX Telephone Companies CEI Plan (ICSPC Comments); MCI Telecommunications Corporation Comments (MCI Comments); Initial Comments of the New England Public Communications Council, Inc. (NEPCC Comments); Comments of Oncor Communications, Inc. (Oncor Comments); Comments of Telco Communications Group, Inc., on NYNEX's Comparably Efficient Interconnection Plan (Telco Comments). APCC filed an erratum to its comments on February 12, 1997.

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et seq.

⁹ 47 U.S.C. § 276.

¹⁰ Id. § 276(b)(1)(C).

¹¹ Payphone Order at para. 199. In addition, the Commission adopted accounting safeguards for BOC and incumbent LEC provision of payphone service on an integrated basis. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490, para. 100 (rel. Dec. 24, 1996).

requirements as modified by section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements."¹² Obtaining approval of its CEI plan is one of the criteria a BOC must meet before its payphone operations may receive compensation for completed intrastate and interstate calls using a payphone under the new compensation plan established in the payphone proceeding.¹³

5. The Payphone Order required BOCs to "provide tariffed, nondiscriminatory, basic payphone services that enable independent [payphone service] providers to offer payphone services using either instrument-implemented 'smart payphones' or 'dumb' payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs."¹⁴ Those tariffs must be filed with the applicable state regulatory commission.¹⁵ Additionally, BOCs must file with the Commission tariffs for unbundled features or functions that are either used by a BOC's payphone affiliate to provide payphone service or offered by the BOC to unaffiliated payphone service providers (PSPs) on an unbundled basis.¹⁶

¹² Payphone Order at para. 199. In its notice of proposed rulemaking regarding the CPNI and other customer information provisions of the 1996 Act, the Commission concluded that its previously established CPNI requirements would remain in effect, pending the outcome of that rulemaking, to the extent that they do not conflict with the CPNI provisions of the 1996 Act. See Implementation of the Telecommunications Act of 1996: Telecommunication Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Notice of Proposed Rulemaking, 11 FCC Rcd 12513, 12529, para. 38 (rel. May 17, 1996) (CPNI NPRM).

¹³ Reconsideration Order at para. 132. In addition to an approved CEI plan, in order to receive compensation, the Reconsideration Order requires that "a LEC must be able to certify the following: (1) it has an effective cost accounting manual ('CAM') filing; (2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ('SLC') revenue; (3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; (4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ('CPE') and related costs as required in the [Payphone Order]; (5) it has in effect intrastate tariffs for basic payphone services (for 'dumb' and 'smart' payphones); and (6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines." Id. at para. 131.

¹⁴ Reconsideration Order at para. 162. A "smart" payphone has capabilities programmed into it that perform certain functions, such as rating calls or collecting or returning coins. A "dumb" payphone does not have such capabilities but must instead rely on central office controls to perform such functions.

¹⁵ Id. at paras. 162-63.

¹⁶ Payphone Order at paras. 146-148; Reconsideration Order at paras. 162-163; Clarification Order at para. 8.

III. SERVICE DESCRIPTION

6. NYNEX currently offers a variety of tariffed Basic Public Access Line (Basic PAL) services in all of its state jurisdictions.¹⁷ According to NYNEX, these tariffed services, which vary by state jurisdiction,¹⁸ are currently used by unaffiliated PSPs to offer competitive payphone services using "smart" payphones and, on a limited basis, "dumb" payphones.¹⁹ Generally, these Basic PAL lines provide two-way or one-way originating only measured service with optional features including line side answer supervision (LSAS),²⁰ billed number screening (BNS),²¹ and certain call blocking features.

7. NYNEX has supplemented its existing Basic PAL services with four additional tariffed service offerings, which hereinafter are referred to as Smart Public Access Line (Smart PAL) services:

- (1) One-Way Basic Coin Access Line, which provides outgoing-only message service with central office-based coin functionality,²² answer supervision, and certain call blocking and screening features;
- (2) Two-Way Basic Coin Access Line, which allows both incoming and outgoing calls and provides coin functionality, answer supervision, and certain call blocking and screening features;
- (3) Inmate Public Access Line, which provides outgoing-only coinless service, limited to collect calls only;

¹⁷ NYNEX CEI Plan at 3.

¹⁸ See Letter from Alan S. Cort, NYNEX, to William F. Caton, Acting Secretary, Federal Communications Commission, Attachment B (March 20, 1997) (March 20th Letter).

¹⁹ NYNEX CEI Plan at 3.

²⁰ LSAS sends an "off-hook" supervisory signal to the payphone line when the called party answers the call. March 20th Letter, Attachment B, at 4. When the called party disconnects, an "on-hook" signal is detected and the reverse battery signal is returned to normal. According to NYNEX, LSAS improves the accuracy of a PSP's timing of sent paid (i.e., coin) calls. Id.

²¹ BNS blocks incoming collect and third party calls from being billed to a payphone line when originating within the continental United States. Id.

²² Coin functionality includes dial tone first (DTF), call rating, automated local coin overtime, coin collect/coin return, return of initial coin deposit on calls beyond local calling area, operator system control to process 0+ and 0- calls, and standard recorded announcements. March 20th Letter, Attachment A, at 1. DTF enables customers to dial certain calls, such as 911 calls, without depositing coins.

- (4) Charge-A-Call Public Access Line, which allows outgoing-only coinless calls to 0+ for calling card billing.²³

8. NYNEX represents that it will treat affiliated and non-affiliated PSPs on a nondiscriminatory basis in regard to any fraud protection and special numbering arrangements and in the installation and maintenance of basic payphone services.²⁴ NYNEX also asserts that its PAL services will provide the necessary functionality for PSPs to provide their own billing and collections processes for calls completed from "smart" payphones and "dumb" payphones that utilize NYNEX's central office technology.²⁵ According to NYNEX, its One-Way Basic Coin Access Line and Two-Way Basic Access Line will provide the appropriate coin signaling and supervision capability to monitor coin deposits for calls placed from "dumb" payphones.²⁶

9. NYNEX operates its payphone business on a structurally unseparated basis from its telephone operating companies, as permitted by the Payphone Order.²⁷ NYNEX states that it currently provides public payphone services to end-users utilizing a combination of "smart" and "dumb" payphones that utilize certain central office coin related capabilities.²⁸ NYNEX intends to use its Inmate Public Access Line to provide inmate calling services.²⁹

IV. COMPLIANCE ISSUES

A. CEI Plan Requirements

10. The Commission's CEI requirements were originally established in the Computer III proceeding, in which the Commission adopted a regulatory framework to govern the provision of integrated enhanced and basic services by the BOCs.³⁰ As applied in the

²³ NYNEX CEI Plan at 3-4.

²⁴ Id. at 4.

²⁵ Id. at 5.

²⁶ Id. at 5 n.15

²⁷ See Payphone Order at ¶ 145

²⁸ NYNEX CEI Plan at 2.

²⁹ March 20th Letter at 2.

³⁰ See Phase I Order, 104 FCC 2d at 1026, para. 128. Requiring BOCs to file CEI plans was one of the nonstructural safeguards adopted by the Commission, in lieu of structural separation, to prevent cross-subsidization and discrimination. As a first step in implementing the Computer III framework, the Commission permitted the BOCs, which remained subject to various structural separation requirements, to offer individual enhanced services on an integrated basis following approval of service-specific CEI

payphone context, the CEI requirements are designed to give independent PSPs equal and efficient access to the regulated basic payphone services provided by the BOCs as well as those basic services that the BOCs use to provide their own payphone services.³¹ The Commission, in its Computer III proceeding, established nine specific CEI requirements,³² which are discussed below. NYNEX has described in its submissions how it will satisfy each of these nine requirements. We review below NYNEX's CEI plan with respect to each of these requirements.

1. Unbundling of Basic Services

11. The Payphone Order deregulated LEC payphones and classified those payphones as customer premises equipment (CPE).³³ In addition to providing tariffed coin service so competitive payphone providers can offer payphone services using either "smart" payphones or "dumb" payphones that utilize central office coin services, a LEC must also tariff unbundled payphone features that the LEC uses or provides on an unbundled basis.³⁴ Moreover, BOCs, but not other LECs, must unbundle additional network elements when requested by payphone providers based on the specific criteria established in the Computer III and ONA proceedings.³⁵

12. The Payphone Order requires BOCs to file CEI plans that explain how they will unbundle basic payphone services.³⁶ Specifically, a BOC must indicate how it plans to unbundle, and associate with a specific rate element in the tariff, the basic services and basic service functions that underlie its provision of payphone service.³⁷ Nonproprietary information used by the BOC in providing the unbundled basic services must be made

plans. BOCs were required to describe in their CEI plans: (1) the enhanced service or services to be offered; (2) how the underlying basic services would be made available for use by competing enhanced service providers (ESPs); and (3) how the BOCs would comply with the other nonstructural safeguards imposed by Computer III. See Phase I Order, 104 FCC 2d at 1034-59, paras. 142-200.

³¹ See Payphone Order at paras. 146, 200-204.

³² Phase I Order, 104 FCC 2d at 1039-1043, paras. 154-166.

³³ Payphone Order at para. 142.

³⁴ Id. at paras. 146-148; Reconsideration Order at paras. 162-163; Clarification Order at para. 8.

³⁵ Payphone Order at para. 148; Reconsideration Order at para. 165.

³⁶ Payphone Order at para. 204.

³⁷ Id. at para. 204 (citing Phase I Order, 104 FCC 2d at 1040). See also Reconsideration Order at para. 213.

available as part of CEI.³⁸ In addition, any options available to the BOC in the provision of such basic services or functions must be included in the unbundled offerings.³⁹

13. The basic services underlying NYNEX's payphone services consist of the Smart PAL services described above,⁴⁰ which NYNEX uses predominately with "dumb" payphones. As previously noted, NYNEX also offers a variety of Basic PAL services that are used by unaffiliated PSPs with "smart" payphones.⁴¹ For purposes of this order, Basic PAL service will also be referred to as "customer owned, coin operated telephone" or "COCOT" service, and Smart PAL service will also be referred to as "coin line" service.

14. NYNEX represents that it has unbundled all basic services and functions used by its payphone operations.⁴² According to NYNEX, these services and functions constitute the minimum set of network functions required for connectivity to the network.⁴³ NYNEX also represents that all basic services that it uses to provide payphone services have been tariffed, and any network functions it uses are available to all PSPs under the same rates, terms, and conditions.⁴⁴

15. APCC and NEPCC argue that NYNEX's CEI plan must be rejected because NYNEX has not sufficiently unbundled payphone features and functionalities from the payphone access line.⁴⁵ APCC contends that NYNEX is required to offer the basic payphone lines for its Basic PAL and Smart PAL services, and to offer separately the features and functionalities that NYNEX proposes to offer as part of those basic payphone offerings.⁴⁶ APCC argues that such unbundling and separate tariffing are necessary to ensure that NYNEX's payphone offerings are nondiscriminatory and free from cross subsidization.⁴⁷ NEPCC asserts that NYNEX's bundling of certain features in its coin line service that are

³⁸ Payphone Order at para. 204 (citing Phase I Order, 104 FCC 2d at 1040).

³⁹ Id.; see also Recon Order at para. 213 (citing Phase I Order, 104 FCC 2d at 1040).

⁴⁰ See supra ¶ 7.

⁴¹ See supra ¶ 6.

⁴² NYNEX CEI Plan at 6.

⁴³ Id.

⁴⁴ Id.

⁴⁵ APCC Comments at 5-6; NEPCC Comments at 3.

⁴⁶ APCC Comments at 5-6.

⁴⁷ Id. at 6.

unbundled for its Basic PAL service is discriminatory and in violation of section 276.⁴⁸ NEPCC also contends that, if NYNEX offers an unbundled service in one state, then it should be required to offer the unbundled service in the other states it serves as well.⁴⁹

16. NYNEX responds that its Basic PAL and Smart PAL offerings comply with the CEI unbundling requirement. NYNEX contends that the Commission did not require carriers to unbundle coin line features from the basic payphone line, and that such requests should be handled through the ONA request process.⁵⁰

17. We find that NYNEX's plan satisfies the CEI unbundling requirement contained in the payphone rulemaking proceeding. The payphone rulemaking proceeding requires BOCs to offer transmission services that enable unaffiliated PSPs to offer payphone services using either "smart" or "dumb" payphones or to offer inmate calling services.⁵¹ In addition, consistent with the payphone rulemaking proceeding requirements, BOCs must provide on a tariffed basis the unbundled features and functions they provide to others or to their payphone operations.⁵² NYNEX's plan satisfies those requirements. We note, however, that NYNEX may choose to unbundle additional functions and features, states may request further unbundling, and payphone providers may request additional unbundled features and functions through the ONA 120-day service request process.⁵³ Any other unbundled features and functions provided by NYNEX must comply with the tariffing and CEI requirements of the payphone rulemaking proceeding, Computer III and ONA.

18. We reject the contentions of APCC and NEPCC that NYNEX must unbundle the coin supervision and other features of its Smart PAL service offerings. As noted in the Clarification Order, the payphone orders "do not require that LECs unbundle more features and functions from the basic payphone line . . . than the LEC provides on an unbundled basis."⁵⁴ In the Clarification Order, we stated that, for example, if a BOC provides answer supervision bundled with the basic payphone line, the BOC is not required either to unbundle that service from its state tariff for payphone service, or to tariff that service at the federal level. If the LEC, however, provides answer supervision, on an unbundled basis, either to affiliated or unaffiliated PSPs, the LEC must tariff that feature in both the state and federal

⁴⁸ NEPCC Comments at 4.

⁴⁹ Id. at 5.

⁵⁰ NYNEX Reply at 3-4.

⁵¹ Payphone Order at para. 146.

⁵² Reconsideration Order at para. 146.

⁵³ Clarification Order at para. 8, n.23.

⁵⁴ Id. at para. 16 (citing Payphone Order at para. 148; Reconsideration Order at para. 165).

jurisdictions.⁵⁵ Because NYNEX offers, and will use, the Smart PAL services on a bundled basis,⁵⁶ it is not required to unbundle the individual features that comprise those services in its CEI plan. No further unbundling is required at this time.⁵⁷ Independent payphone providers may seek further unbundling by making a request pursuant to the ONA process.⁵⁸

19. We also reject NEPCC's contention that, if NYNEX offers an unbundled service in one state, it is required to offer that unbundled service in all of the states it serves. As noted, any payphone feature that a BOC uses on an unbundled basis in a state must be offered to independent PSPs in that state. Except as required pursuant to the ONA request process, a BOC is not obligated to unbundle additional services in a state unless the state requires it to do so.⁵⁹

2. Interface Functionality

20. The interface functionality requirement obligates the BOC to make available standardized hardware and software interfaces that are able to support transmission, switching, and signaling functions identical to those used by the BOC's payphone operations.⁶⁰

⁵⁵ Clarification Order at para. 16. That Order clarified that the unbundled features and functions addressed in the payphone rulemaking proceeding are network services similar to basic service elements ("BSEs") under the ONA framework. BSEs are defined as optional unbundled features that an enhanced service provider may require or find useful in configuring its enhanced service. Id. at para. 17 (citing Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, FCC 88-381, 4 FCC Rcd 1 (1988)). In this case, the unbundled features are payphone specific, network-based features and functions used in configuring unregulated payphone operations provided by LECs or non-LEC PSPs. Some of the LECs use terms such as tariffed "options" and "elective features" to refer to network services that other LECs call features and functions. The Clarification Order concluded that "[o]ptions and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs). Id. (citing Application of Open Network and Nondiscrimination Safeguards to GTE Corporation, 11 FCC Rcd 5558 (1995)).

⁵⁶ NYNEX Reply at 3.

⁵⁷ Payphone Order at para. 148.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id. at paras. 202-03; Phase I Order, 104 FCC 2d at 1039, para. 157.

21. NYNEX claims that its payphone operations will utilize the same standard interfaces and tariffed transmission offerings that are available on the same terms and conditions to all PSPs.⁶¹ According to NYNEX, all PSPs therefore can interconnect to the telephone network through identical standard hardware and software interfaces and access arrangements associated with tariffed basic services.⁶² NYNEX represents that the details of the interfaces for its four newly-tariffed Smart PAL services were disclosed in a network information disclosure in the December 1996 issue of the Bellcore Digest.⁶³ NYNEX also asserts that its payphone operations will utilize basic services only when they are made generally available to others.⁶⁴

22. Telco asserts that NYNEX's statement that PSPs will obtain access to the network through existing interfaces available through NYNEX's standard network interfaces is insufficient. Telco argues that NYNEX must provide "further explanation or meaningful detail regarding the technical requirements [a PSP] must meet to connect to the network interfaces" ⁶⁵

23. We find that NYNEX complies with the interface functionality requirement. As stated above, this requirement only obligates the BOC to make available standardized hardware and software interfaces that will be able to support transmission, switching, and signaling functions identical to those used by the BOC's payphone operations. NYNEX avers that it has met this requirement. Beyond the filing of network disclosures, which NYNEX states that it has filed, and Telco does not dispute NYNEX's claims, this parameter does not require NYNEX to provide technical details in the CEI plan explaining how PSPs will connect to NYNEX's network.

3. Resale

24. The resale requirement established in Computer III obligates a "carrier's enhanced service operations to take the basic services used in its enhanced service offerings at their unbundled tariffed rates as a means of preventing improper cost-shifting to regulated operations and anticompetitive pricing in unregulated markets."⁶⁶ Based on the requirement in the Payphone Order and the Reconsideration Order, any basic services provided by a BOC to

⁶¹ NYNEX CEI Plan at 5.

⁶² Id.

⁶³ Id. at 5 n.17. See also March 20th Letter, Attachment C (copy of NYNEX' network disclosure).

⁶⁴ NYNEX CEI Plan at 6.

⁶⁵ Telco Comments at 2-3.

⁶⁶ Phase I Order, 104 FCC 2d at 1040, para. 159.

its payphone affiliate, as well as any payphone service provided by others, must be available on a nondiscriminatory basis to other payphone providers.⁶⁷

25. NYNEX represents that its payphone operations will procure CEI elements at the same tariffed rates, terms and conditions as it will make the elements available to other PSPs.⁶⁸ We find that NYNEX has met the resale requirement. We are not persuaded by Telco's argument that NYNEX's plan is insufficient, because it "fails to address *how* it will provide resale or specify what combinations will be offered for resale, whether resale will be offered on a nondiscriminatory basis, or what mechanisms will exist to enable competitors to ensure that resale obligations are being met."⁶⁹ We find that NYNEX's representation is sufficient to meet this CEI requirement. To the extent that Telco's objections are based on concerns that NYNEX's tariffed payphone offerings unlawfully discriminate against unaffiliated PSPs, contrary to NYNEX's express representation to the contrary, such specific, fact-based claims should be addressed in federal or state tariff proceedings or formal complaints against NYNEX.

4. Technical Characteristics

26. This requirement obligates a carrier to provide basic services with technical characteristics that are equal to the technical characteristics the carrier uses for its own payphone services.⁷⁰

27. According to its CEI plan, NYNEX will provide interconnection to the payphone offerings of NYNEX and its competitors through the same standard network interfaces and these interconnections are provided under tariff and support all the transmission, switching, and signaling functions used by NYNEX's payphone operations.⁷¹ We find that NYNEX's CEI plan comports with the technical characteristics requirement established by the Commission. To the extent that Telco obtains credible evidence that NYNEX has unlawfully discriminated against unaffiliated PSPs in the assignment of access lines, Telco may initiate a formal complaint against NYNEX.

⁶⁷ Payphone Order at para. 200; Reconsideration Order at para. 211.

⁶⁸ NYNEX CEI Plan at 6.

⁶⁹ Telco Comments at 2.

⁷⁰ Payphone Order at paras. 199-207; Reconsideration Order at paras. 218-220; Phase I Order, 104 FCC 2d at 1041, para. 160.

⁷¹ NYNEX CEI Plan at 6.

5. Installation, Maintenance, and Repair

28. The Payphone Order requires BOCs to describe in their CEI plans how they will comply with the nondiscrimination requirements in Computer III and ONA regarding the quality of service, installation, and maintenance.⁷² This requirement ensures that the time periods for installation, maintenance, and repair of the basic services and facilities included in a CEI offering to unaffiliated PSPs are the same as those the carrier provides to its own or its affiliated payphone service operations.⁷³ BOCs also must satisfy reporting and other requirements showing that they have met this requirement.⁷⁴

29. In its CEI plan, NYNEX represents that its installation, design, maintenance, and repair methods and procedures are highly automated and are designed to treat all customers, including PSPs, in an impartial, efficient, nondiscriminatory manner.⁷⁵ NYNEX also represents that it will establish procedures and processes that insure that affiliated and non-affiliated PSPs are treated the same with regard to the quality and time period associated with installation, maintenance and repair of basic services.⁷⁶ NYNEX asserts that mechanized access capabilities associated with the installation, maintenance, and repair of basic services used in the provision of NYNEX's payphone services will be made available on a comparably efficient basis to all PSPs to insure that the quality and time period associated with the installation, maintenance, and repair of basic services will be the same. NYNEX also notes that the Commission has previously found NYNEX's procedures for ordering, installing, maintaining, and repairing underlying basic services to be nondiscriminatory.⁷⁷

30. Several commenters argue that NYNEX must provide further detail regarding how it will provide installation and repair on a non-discriminatory basis to unaffiliated PSPs, in order for the Commission to be able to evaluate whether nondiscriminatory procedures will

⁷² Payphone Order at para. 207.

⁷³ Id. at para. 203; Phase I Order, 104 FCC 2d at 1041, para. 161.

⁷⁴ Phase I Order, 104 FCC 2d at 1041, para. 16. NYNEX must provide quarterly reports on installation and maintenance of its basic services. Id. at 1055-1056, paras. 192-193. The Payphone Order does not impose any new continuing reporting requirement because BOCs are already subject to reporting requirements pursuant to Computer III and ONA. BOCs must report on payphone services as they do for basic services.

⁷⁵ CEI Plan at 7.

⁷⁶ Id.

⁷⁷ Id. at 7 n.20 (citing Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd. 1, paras. 467-73 (1988)).

in fact be in place.⁷⁸ For instance, APCC contends that NYNEX's plan must describe NYNEX's installation and repair procedures and disclose whether its payphone operations personnel will have direct access to automated service order processing systems.⁷⁹

31. APCC also asserts that NYNEX should explain whether it intends to share personnel between its operating company and payphone operations and, if so, the measures it will implement to ensure that the use of shared personnel will not lead to discrimination in the provision of installation, maintenance, and repair.⁸⁰ NEPCC contends that NYNEX should be required to commit to avoid such sharing of personnel, particularly for installation, repair, and maintenance functions.⁸¹ In addition, APCC argues that NYNEX should identify for its payphone offerings the demarcation point between the switched network and a payphone provider's inside wire.⁸² IPANY contends that recent examples of alleged discriminatory and anticompetitive treatment of unaffiliated PSPs by New York Telephone cast doubt on NYNEX's pledge to treat competing PSPs in a nondiscriminatory manner.⁸³ For example, IPANY alleges that NYNEX requires independent PSPs that own curbside payphones in New York to pay the expense of installing conduit to the payphone from the manhole even though NYNEX has never charged its own payphone operations for similar installation.⁸⁴

32. In reply, NYNEX states that it will update existing procedures and processes and will train personnel to ensure that NYNEX's payphone operations will be treated in the same way as nonaffiliated PSPs by the same customer service organizations that deal with nonaffiliated PSPs for the provision, maintenance, and repair of network services.⁸⁵ According to NYNEX, this will include the use of the same means of communication (e.g., paper, facsimile, and systems) and information requirements to initiate, manage, and monitor the status of network service requests and trouble reports.⁸⁶ NYNEX also represents that costs

⁷⁸ APCC Comments at 12; NEPCC Comments at 8; IPANY Comments at 3; Telco Comments at 3.

⁷⁹ APCC Comments at 12-13.

⁸⁰ Id. at 13-14.

⁸¹ NEPCC Comments at 8.

⁸² APCC Comments at 13. See also NEPCC Comments at 8.

⁸³ IPANY Comments at 3-9. New York Telephone is a subsidiary of NYNEX that provides local exchange and exchange access telephone service in New York.

⁸⁴ IPANY Comment at 6-7. IPANY also alleges that New York Telephone has unreasonably refused to provide connections to payphones owned by independent PSPs through a terminal box on a privately-owned building adjacent to the payphones. Id. at 4-5.

⁸⁵ NYNEX Reply at 11.

⁸⁶ Id. at 11.

associated with the use of telephone company network service technicians and installation and repair organizations by NYNEX's payphone operations will be appropriately allocated under Parts 32 and 64 of the Commission's rules.⁸⁷ NYNEX asserts that the concerns of discriminatory installation and maintenance service raised by IPANY are outside the scope of this proceeding and are being addressed in the state regulatory arena.⁸⁸ NYNEX also contends that New York Telephone's conduct in the examples cited by IPANY was consistent with New York state law.⁸⁹ Finally, NYNEX states that, in the deregulated payphone environment, New York Telephone's payphone operations will be subject to the same special construction, installation and other charges as nonaffiliated PSPs.⁹⁰

33. We find that NYNEX has met the installation, maintenance, and repair requirement. We conclude that NYNEX's description of the procedures that it will employ to ensure nondiscriminatory treatment of its own payphone operations and those of unaffiliated PSPs is sufficient for us to conclude that its CEI plan satisfies this parameter. We also reject APCC's argument that NYNEX must provide further explanation about personnel sharing in order to ensure that there will be no discrimination against unaffiliated PSPs and NEPCC's argument that NYNEX should commit to refrain from sharing personnel. In the Payphone Order, we specifically declined to require BOCs to provide payphone CPE through a structurally separated affiliate.⁹¹ More importantly, we find that NYNEX sufficiently describes the procedures it has adopted to address concerns about discrimination, even with shared personnel. NYNEX represents that its installation, design, maintenance, and repair methods and procedures are highly automated and are designed to treat all customers, including PSPS, in an impartial, efficient, nondiscriminatory manner.⁹² NYNEX also represents that the customer service organizations that NYNEX will use to provide these functions will be the same for the nonaffiliated PSPs as well as the affiliated PSPs, and that it will train personnel responsible for network services to treat affiliated and nonaffiliated PSPs in a nondiscriminatory manner.⁹³ Moreover, NYNEX asserts that the time intervals for providing installation, maintenance and repair will be the same for all PSPs. Finally, we note that the Commission's rules require BOCs to allocate properly the costs, including costs

⁸⁷ Id. at 12 n.30.

⁸⁸ Id. at 12.

⁸⁹ Id. at 12-14.

⁹⁰ Id. at 14.

⁹¹ Payphone Order at ¶ 145.

⁹² NYNEX CEI Plan at 7.

⁹³ NYNEX Reply at 11.

associated with the use of personnel, between regulated and nonregulated operations.⁹⁴ We also note that, pursuant to section 64.904 of the Commission's rules, LECs that file CAMs are required to have an independent audit performed annually.⁹⁵

34. With respect to IPANY's complaints of past alleged nondiscriminatory conduct by New York Telephone, we do not believe that the pendency of these issues before the New York Commission requires us to find that NYNEX's plan does not satisfy our CEI requirements. Rather, in our view, these matters are better addressed in the state regulatory context. The record in this proceeding shows, according to both NYNEX and IPANY, that discussions are currently underway among New York Telephone, IPANY, and the New York Public Service Commission on the issues raised in IPANY's comments.⁹⁶

35. Finally, we conclude that NYNEX has sufficiently identified the demarcation point to determine when maintenance becomes the payphone provider's responsibility and is not part of the access network service.⁹⁷ NYNEX states that the demarcation point will be "located within 12 inches of the terminal equipment side of the protector, or if there is no protector within twelve inches of the point where the telephone wiring enters the premises."⁹⁸ PSP payphones located on pedestals or other types of freestanding locations will have the demarcation point in the pedestal.⁹⁹ NYNEX further represents that the demarcation point for affiliated and non-affiliated PSPs will be established consistent with state and federal rules.¹⁰⁰

6. End User Access

36. With regard to payphone services, this parameter requires the BOC to provide to all end users the same network capabilities to activate or obtain access to payphone services that utilize the BOC's facilities. This parameter also requires the BOC to provide all end users equal opportunities to obtain access to basic network facilities.¹⁰¹

⁹⁴ See 47 C.F.R. §§ 64.901, 64.903.

⁹⁵ See 47 C.F.R. § 64.904.

⁹⁶ See IPANY Comments at 2-3; NYNEX Reply at 12.

⁹⁷ See Reconsideration Order at ¶¶ 150, 151, 167. Phase I Order, 104 FCC 2d at 1041, para. 162.

⁹⁸ NYNEX Reply at 17.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ See Phase I Order, 104 FCC 2d at 1041, para. 162; Payphone Order at para. 199.

37. NYNEX represents that affiliated and nonaffiliated PSPs' end users (i.e., the transient public and inmates at correctional facilities) will have access to the same underlying tariffed services through the use of the payphone services provided by the individual PSP.¹⁰² NYNEX maintains that the same network-based dialing and signaling capabilities will therefore be available to affiliated and non-affiliated PSP end users.¹⁰³ Telco argues that NYNEX's description of how it will provide end user access is too vague and that NYNEX must specify how end users will obtain access.¹⁰⁴ We find that NYNEX is not required to provide the information requested by Telco in order to satisfy this CEI parameter. We find that NYNEX's CEI plan comports with the end user access requirement established by the Commission.

7. CEI Availability

38. This requirement obligates a carrier's CEI offering to be available and fully operational on the date that it offers its corresponding payphone service to the public. The requirement also obligates the carrier to provide a reasonable time prior to that date when prospective users of the CEI offering can use the CEI facilities and services for purposes of testing their payphone service offerings.¹⁰⁵ Past decisions also have referred to this as the 90-day notice requirement.¹⁰⁶

39. The payphone rulemaking proceeding established the following tariffing requirements for LECs. LECs must file tariffs in the states for basic payphone services that enable independent PSPs to offer payphone services using either smart or dumb payphones and for any unbundled features that the LECs provide to their payphone operations or to others.¹⁰⁷ LECs are not required to file tariffs for the basic payphone line for smart and dumb

¹⁰² NYNEX CEI Plan at 7.

¹⁰³ Id. at 7-8.

¹⁰⁴ Telco Comments at 2.

¹⁰⁵ Phase I Order, 104 FCC 2d at 1041, para. 163. The testing period is necessary "to balance the conflicting interests of the carrier, which should have a reasonable period to develop, test, and 'de-bug' its CEI offerings before making them publicly available, and other CEI users, such as competitors, that might suffer an unfair competitive disadvantage if carriers were able to test and perfect their . . . services -- particularly, their interconnection with the basic underlying facilities -- while withholding those same basic facilities from others." Id.

¹⁰⁶ See e.g., Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Ameritech's Request for Waiver Related to Minor Amendment to Ameritech's Plan to Provide Comparable Efficient Interconnection to Providers of Voice Mail Messaging Service, CCBPol 96-23, DA 96-1894 (rel. Nov. 14, 1996).

¹⁰⁷ See Clarification Order at para. 8.

payphones with the Commission.¹⁰⁸ As stated in the Clarification Order, LECs are required to file federal tariffs for payphone-specific, network-based features and functions "only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to their own operations or to others" ¹⁰⁹

40. The Clarification Order also granted all LECs a limited waiver of the federal tariffing requirements for unbundled features and functions that a LEC must meet before it is eligible to receive payphone compensation. Pursuant to this waiver, LECs must file interstate tariffs for unbundled features and functions within 45 days of the release date of the Clarification Order.¹¹⁰ In addition, each individual BOC was required to file by April 10, 1997, a written ex parte document advising on the status of intrastate tariffs for the features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features and functions within 45 days of the release date of that Order.¹¹¹

41. NYNEX represents that its payphone service operations will offer payphone services on a region-wide basis and it will use a combination of its Smart PAL and Basic PAL services, which are available to other carriers under the same rates, terms, and conditions and at the same time to all PSPs.¹¹² NYNEX further represents that, in the event that it plans to introduce a new underlying basic service or unbundled feature, it will provide notice and a testing capability to PSPs at least ninety days before using such services in the provision of its own payphone services.¹¹³ NYNEX filed with its CEI plan state tariffs for the Smart PAL services that it will offer in each of the states in which it provides local telephone services.¹¹⁴ Generally, these tariffs also include the Basic PAL services that NYNEX currently offers in those states.

42. APCC and NEPCC contend that NYNEX's CEI plan must be rejected because NYNEX did not file the required federal tariffs.¹¹⁵ They contend that, pursuant to the Reconsideration Order, NYNEX must file tariffs for unbundled features at both the state and federal level, and that the only service for which a federal tariff is not required is the basic

¹⁰⁸ Reconsideration Order at paras. 162-163.

¹⁰⁹ Clarification Order at para. 18.

¹¹⁰ Id. at para. 21.

¹¹¹ Id. at para. 22.

¹¹² NYNEX CEI Plan at 8.

¹¹³ Id.

¹¹⁴ See NYNEX CEI Plan, Attachment A.

¹¹⁵ APCC Comments at 5; NEPCC Comments at 3.

line for smart and dumb payphones.¹¹⁶ In response, NYNEX contends that it is in compliance with the payphone rulemaking proceeding's federal tariffing requirement, as implemented by the Clarification Order.¹¹⁷ In an ex parte filing, NYNEX represents that it will file federal tariffs, in accordance with the requirements of the Clarification Order, for the following unbundled features: line side answer supervision, direct dial screening, operator number screening, and terminating number screening.¹¹⁸

43. APCC also contends that NYNEX must be required to disclose how many of its payphones in each jurisdiction are subscribed to Basic PAL service and how many are subscribed to coin line service.¹¹⁹ APCC further argues that, because NYNEX's tariffs for coin line services offer such services subject to the availability of facilities, NYNEX must be required to disclose where coin line service is not available and whether it has any payphones currently installed in those areas.¹²⁰ NEPCC contends that, if NYNEX has any payphones in those areas, it must convert them to Basic PAL service.¹²¹ AT&T argues that, at minimum, NYNEX's CEI plan must be amended to clarify that Smart PAL service will be available to independent PSPs at every central office where such service is provided to NYNEX's payphone operations, and to reflect such conditions of availability in its tariffs.¹²²

44. NYNEX responds that, at present, its payphone operations will subscribe only to NYNEX's Smart PAL services, rather than its Basic PAL services.¹²³ NYNEX responds to AT&T's request for clarification by stating that its Smart PAL services will be available to non-affiliated PSPs in all central offices where such services are provided to NYNEX's payphone operations.¹²⁴

¹¹⁶ APCC Comments at 5; NEPCC Comments at 3.

¹¹⁷ See Letter from Alan S. Cort, NYNEX, to William F. Caton, Acting Secretary, Federal Communications Commission (Apr. 10, 1997).

¹¹⁸ Id.

¹¹⁹ APCC Comments at 4.

¹²⁰ Id. at 8-9.

¹²¹ NEPCC Comments at 6.

¹²² AT&T Comments at 2.

¹²³ March 20th Letter at 2.

¹²⁴ NYNEX Reply at 6.

45. We find that NYNEX's plan complies with the CEI availability requirement.¹²⁵ We reject the arguments of APCC and NEPCC that NYNEX must file a federal tariff for all payphone service features and functions except for the basic access line for Basic PAL and Smart PAL service. As stated in the Clarification Order, BOCs need only submit federal tariffs for payphone-specific, network-based features and functions if the BOC provides them separately and on an unbundled basis from the basic payphone line either to its payphone operations or to others.¹²⁶ Because NYNEX will use, and offer, the features and functions of its Smart PAL services on a bundled basis, NYNEX need not unbundle those features and thus need not file a separate federal tariff for them at this time. As noted, NYNEX has committed to file federal tariffs for the unbundled payphone features offered in conjunction with its Basic PAL services.

46. We also conclude that NYNEX is not required to identify in its CEI plan specific geographic areas where Smart PAL service is not available or to state whether NYNEX has any payphones in such areas or what type of service, Smart PAL or Basic PAL, is being provided. NYNEX's New York state tariff provides that Smart PAL services are furnished from suitably equipped central offices, subject to the availability of facilities.¹²⁷ NYNEX represents that its Smart PAL services will be available to non-affiliated PSPs in all central offices where such services are provided to NYNEX's payphone operations.¹²⁸ We find that the state tariffs together with representations made by NYNEX provide adequate information concerning the availability of its Smart PAL services for purposes of our CEI plan requirements. We also find no basis in our CEI requirements or the payphone orders for directing NYNEX to identify how many of its payphones are subscribed to Basic PAL and how many are subscribed to Smart PAL for purposes of satisfying our CEI requirements.

47. Finally we waive on our motion the 90-day notice requirement for NYNEX's provision of Smart PAL services. Therefore, NYNEX may continue to provide Smart PAL services through the use of the CEI offering described herein for such services without first providing ninety days for unaffiliated carriers to test such services. This waiver is reasonable in this context because, unlike the provision of a new enhanced service, NYNEX has been offering payphone services using its Smart PAL services for some time. To bar NYNEX from continuing to use its Smart PAL services to provide payphone service for a period of

¹²⁵ We note that our conclusion that NYNEX's CEI plan complies with the CEI availability requirement, and therefore our approval of its CEI plan, is contingent on the effectiveness of NYNEX's state tariffs for payphone services. We note further that, because we are relying on the states to review LEC tariffs for basic payphone lines, our conclusion that NYNEX has satisfied the CEI availability requirement does not represent a determination that NYNEX's basic payphone lines are tariffed in accordance with the requirements of section 276. See also infra ¶ 64.

¹²⁶ Clarification Order at para. 18.

¹²⁷ NYNEX CEI Plan, Attachment A (New York Tariff Revisions, Section 3, Page 14).

¹²⁸ See NYNEX Reply at 6.

ninety days could result in a suspension of service. NYNEX is not, however, relieved of its obligation to permit unaffiliated PSPs upon request to conduct testing of NYNEX's Smart PAL offerings. For purposes of approving NYNEX's CEI plan, we simply waive the requirement that NYNEX's payphone operations may not use NYNEX's Smart PAL services before such testing is accomplished.¹²⁹ If and when other basic payphone services are deployed, NYNEX must make testing capability available to unaffiliated PSPs at the same time that such capability is available to NYNEX's payphone operations, which NYNEX has committed to do.

8. Minimization of Transport Costs

48. This requirement obligates carriers to provide competitors with interconnection facilities that minimize transport costs.¹³⁰ NYNEX asserts that it will charge affiliated and non-affiliated PSPs the same tariffed rates for basic payphone services.¹³¹ We find that NYNEX's CEI plan comports with the minimization of transport costs requirement.¹³²

9. Recipients of CEI

49. This requirement prohibits a BOC from restricting the availability of its CEI offering to any particular class of customer or PSP.¹³³

50. NYNEX avers that all of the basic services that it will use to provide its payphone services are offered under existing tariffs to all PSPs and customers.¹³⁴ We find that NYNEX has proposed to provide service to CEI recipients in compliance with the Commission's requirements.

¹²⁹ The waiver provided herein does not effect the six specific requirements established in the payphone proceeding that carriers must meet before receiving compensation. See Reconsideration Order at para. 131.

¹³⁰ Payphone Order at paras. 202-03; Phase I Order, 104 FCC 2d at 1042, para. 164.

¹³¹ NYNEX CEI Plan at 9.

¹³² See Payphone Order at para. 203; Phase II Reconsideration Order, 3 FCC Rcd. 1155, paras. 32-34.

¹³³ Payphone Order at paras. 202-03; Phase I Order, 104 FCC 2d at 1042, para. 165.

¹³⁴ NYNEX CEI Plan at 8.

B. Other Nonstructural Safeguards

51. In addition to the CEI requirements established in Computer III, and applied to BOC provision of payphone services in the Payphone Order,¹³⁵ a BOC that provides payphone services must comply with requirements regarding the use of customer proprietary network information (CPNI), disclosure of network information, and nondiscrimination reporting.¹³⁶

1. Customer Proprietary Network Information

52. The Payphone Order requires NYNEX to explain how it will comply with the Computer III CPNI safeguards,¹³⁷ to the extent they are not inconsistent with section 222 of the 1996 Act, as amended.¹³⁸ Although the requirements of section 222 became effective immediately upon enactment, the Commission has initiated a proceeding to consider regulations interpreting and specifying in more detail a telecommunications carrier's obligations under this provision.¹³⁹ The Commission has concluded that its existing CPNI regulations remain in effect, pending completion of the CPNI rulemaking, to the extent they do not conflict with section 222.¹⁴⁰

53. In its CEI plan, NYNEX represents that, until such time as the Commission issues regulations in the CPNI rulemaking, it will comply with the requirements of section 222 and with any existing Commission CPNI requirements that are not inconsistent with section 222.¹⁴¹ NYNEX also states that, absent customer consent, the marketing and sales personnel in its payphone operations will be restricted from access to the CPNI associated with other customers or PSPs.¹⁴² In addition, any aggregate customer information derived from such data provided to NYNEX's payphone operations will be made available to other

¹³⁵ Payphone Order at para. 202. See also Reconsideration Order at para. 210.

¹³⁶ Phase II Order, 2 FCC Rcd at 3082, paras. 73-75.

¹³⁷ See id., 2 FCC Rcd at 3095, para. 156.

¹³⁸ Payphone Order at para. 205 (citing 47 U.S.C. § 222 and the CPNI NPRM).

¹³⁹ CPNI NPRM, 11 FCC Rcd at 12514, para. 2.

¹⁴⁰ Id. at 12515, para. 3 (noting that, to the extent that the 1996 Act requires more of a carrier, or imposes greater restrictions on a carrier's use of CPNI, the statute governs).

¹⁴¹ NYNEX CEI Plan at 10 n.25.

¹⁴² Id. at 10.

carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request.¹⁴³

54. APCC and Telco claim that NYNEX's CEI plan does not offer sufficient information concerning how NYNEX will comply with CPNI requirements, but rather merely states that NYNEX will follow existing procedures, except where inconsistent with Section 222.¹⁴⁴ APCC contends that NYNEX should explain how it will protect, under nondiscriminatory conditions, the CPNI of PSPs, as well as the CPNI of NYNEX's existing customers, including current customers of semi-public payphone service.¹⁴⁵ APCC argues that, since the existing tariffed semi-public service is being terminated, NYNEX's payphone personnel have no more right to access and use the CPNI of semi-public service end users than any other PSP.¹⁴⁶ APCC also contends that the deregulation of semi-public service presents PSPs with a potential marketing opportunity to replace NYNEX as the payphone service provider for these customers. APCC argues that semi-public customers should be provided notice and a meaningful opportunity to replace NYNEX with another payphone service provider. It contends that NYNEX must disclose how it will provide such notice in a neutral fashion, including giving such customers an opportunity to authorize disclosure of CPNI on a nondiscriminatory basis to interested payphone providers without preference to NYNEX's payphone operations.¹⁴⁷

55. NYNEX urges us to reject APCC's argument that the Commission apply special rules to semi-public payphone location providers on the ground that its claim constitutes an untimely request for reconsideration of the payphone orders.¹⁴⁸

56. In providing payphone services, NYNEX must comply with the Commission's pre-existing Computer III CPNI requirements, to the extent that they are consistent with section 222 of the Communications Act, as amended, and any regulations adopted by the Commission pursuant to section 222. NYNEX represents that it will comply with section 222 and all CPNI requirements adopted in the Commission's CPNI rulemaking proceeding. Accordingly, we find that NYNEX's plan comports with CPNI requirements. In reaching this conclusion, we do not address issues raised by APCC relating to the CPNI associated with

¹⁴³ Id.

¹⁴⁴ APCC Comments at 19; Telco Comments at 4.

¹⁴⁵ APCC comments at 19-20. See also Letter from Michael S. Wroblewski, on behalf of Peoples Telephone Company, Inc., to William S. Caton, Acting Secretary, Federal Communications Commission (March 5, 1997) (Peoples's March 5 Ex Parte).

¹⁴⁶ APCC Comments at 20.

¹⁴⁷ Id. at 20-21.

¹⁴⁸ NYNEX Reply at 19.

semi-public payphones. Issues relating to the interpretation of section 222, and how it relates to the Computer III CPNI rules, are being addressed in the CPNI rulemaking, and therefore will not be considered here. We do, however, reject APCC's request that we require NYNEX to inform site owners about competitive options for semi-public payphone service, because no such requirement was adopted in the Payphone Order or in the Reconsideration Order, or is otherwise required by our CEI rules.

2. Network Information Disclosure

57. The Payphone Order requires NYNEX to disclose to the payphone services industry information about network changes and new network services that affect the interconnection of payphone services with the network.¹⁴⁹ NYNEX must make that disclosure at the "make/buy" point, that is, when NYNEX decides whether to make or to procure from an unaffiliated entity any product whose design affects or relies on the network interface.¹⁵⁰ NYNEX must provide that information to members of the payphone services industry that sign a nondisclosure agreement, within 30 days after the execution of the nondisclosure agreement.¹⁵¹ NYNEX also must publicly disclose technical information about a new or modified network service twelve months prior to the introduction of that service.¹⁵²

58. In the Payphone Order, the Commission waived the notice period for disclosure of network information relating to the "basic network payphone services" in order to ensure that payphone services are provided on a timely basis consistent with the other deregulatory requirements of that order.¹⁵³ Pursuant to this waiver, network information disclosure on the basic network payphone services must have been made by the BOCs no later than January 15, 1997.¹⁵⁴

59. As described above, NYNEX asserts that it made the necessary network disclosure for its new network interface in December 1996.¹⁵⁵ NYNEX represents that all other underlying network services or features that its payphone operations may use are

¹⁴⁹ Payphone Order at para. 206.

¹⁵⁰ Phase II Order, 2 FCC Rcd at 3086, para. 102.

¹⁵¹ Id. at 3091-3093, paras. 134-140.

¹⁵² Id. at 3092, para. 136. We note that under the Commissions rules, if a BOC is able to introduce the service within twelve months of the make/buy point, it may make public disclosure at the make/buy point. It may not, however, introduce the service earlier than six months after the public disclosure.

¹⁵³ Payphone Order at para. 146.

¹⁵⁴ See id.

¹⁵⁵ See supra ¶ 21.

available under existing tariffs.¹⁵⁶ It also represents that it will continue to comply with the existing, and any revised, network information disclosure requirements.¹⁵⁷ We find therefore that NYNEX's CEI plan comports with the Commission's network information disclosure requirements.

3. Nondiscrimination Reporting

60. In the Payphone Order, we directed the BOCs to comply with the Computer III and ONA requirements regarding nondiscrimination in the quality of service, installation, and maintenance.¹⁵⁸ Specifically, BOCs are required to file the same quarterly nondiscrimination reports, and annual and semi-annual ONA reports, with respect to their basic payphone services that they file for other basic services to ensure that the BOCs fulfill the commitments made in their CEI plans with respect to the nondiscriminatory provision of covered service offerings, installation and maintenance.¹⁵⁹

61. NYNEX represents that it will establish procedures and processes that will ensure that the time periods and quality of service associated with the installation, maintenance, and repair of basic services that are used in the provision of NYNEX's payphone services are the same as those experienced by non-affiliated PSPs.¹⁶⁰ It also commits to modify its quarterly Enhanced Services ONA Nondiscrimination Parity Report to provide installation and maintenance performance data on basic network services provided to affiliated PSPs.¹⁶¹ Finally, NYNEX commits to address its provision of payphone services in its annual affidavit attesting that NYNEX has followed the appropriate and approved nondiscrimination procedures outlined in its ONA Plan relative to the provision of enhanced services. We find that NYNEX's CEI plan comports with the Commission's nondiscrimination reporting requirements.

¹⁵⁶ NYNEX CEI Plan at 11.

¹⁵⁷ Id.

¹⁵⁸ Payphone Order at para. 215.

¹⁵⁹ See id. at para. 207; BOC ONA Reconsideration Order, 5 FCC Rcd 3084, 3096, Appendix B (1990), BOC ONA Amendment Order, 5 FCC Rcd 3103 (1990), Erratum, 5 FCC Rcd 4045, pets. for review denied, California II, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 7646 (1991), BOC ONA Second Further Amendment Order, 8 FCC Rcd 2606 (1993), pet. for review denied, California II, 4 F.3d 1505 (9th Cir. 1993); Phase II Order, 2 FCC Rcd at 3082, para. 73; and Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, Phase I, 6 FCC Rcd 7646, 7649-50 (1991).

¹⁶⁰ NYNEX CEI Plan at 9.

¹⁶¹ Id. at 10.